

**Notice of Allowability**

Application No.

10/031,609

Examiner

Darwin P. Erez

Applicant(s)

COLLINS, MICHEAL NORMAN

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication filed on 6/27/06.
2. ☒ The allowed claim(s) is/are 1-8 and 11.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Louis Woo on 9/7/06.

The application has been amended as follows:

#### **IN THE CLAIMS:**

Replaced Claims 1 and 7 with the following:

(claim 1) A laryngeal mask airway consisting of a tubular portion and a mask portion at a patient end of the tubular portion having a an inflatable sealing cuff of generally oval shape with no partition therein defining an opening within a center thereof and adapted to seal with patient tissue around the laryngeal inlet, the mask portion defining a chamber extending from the opening to the patient end of the tubular portion where the tubular portion opens directly into the chamber such that the entire chamber is available for receiving patient tissue, characterized in that the patient end of the tubular portion is located above and to the rear of the rear side of the opening such as to space it away from the epiglottis.

(claim 7) A laryngeal mask airway consisting of a tubular portion and a mask portion at a patient end having a an inflatable sealing cuff of generally oval shape with no partition therein defining an opening within a center thereof and adapted to seal with

Art Unit: 3731

patient tissue around the laryngeal inlet, the mask portion defining a chamber where to the patient end of the tubular portion opens directly into, characterized in that the height of the recess chamber available for receiving patient tissue is between 2.5 and 3.5 the internal diameter of the tubular portion, and characterized in that the patient end of the tubular portion is located above and to the rear of the rear side of the opening such as to space it away from the epiglottis.

2. The following is an examiner's statement of reasons for allowance:

Independent claims 1 and 7 both use the transitional phrase "consisting of", which excludes any element, step, or ingredient not specified in the claim. *In re Gray*, 53 F.2d 520, 11 USPQ 255 (CCPA 1931); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948). Therefore, the claims read over the prior art of record for the following reasons: (1) US 5,979,445 to Neame teaches a mask having a central web between the opening of the cuff and the patient end of the tubular portion. The existence of this central web or similar structure is fairly common in the laryngeal mask art. This structure is not specified in the claims. (2) US 5,983,897 to Pagan does teach a laryngeal mask without any intervening structure between the opening of the cuff and the patient end of the tubular portion. However, Pagan does not teach a single inflatable sealing cuff with no partition therein. (3) US 4,509,514 to Brain and US 6,021,779 to Pagan both fail to teach the patient end of the tubular portion located above and to the rear of the rear side of the opening.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who's telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANH TUAN T. NGUYEN  
SUPERVISORY PATENT EXAMINER  
9/4/06